

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NORTH CAROLINA
EASTERN DIVISION

No. 4:07-CV-165-F

DOCTOR B. JONES,)	
Plaintiff,)	
)	
v.)	<u>ORDER</u>
)	
DEPARTMENT OF THE NAVY,)	
DONALD C. WINTERS, SECRETARY)	
OF THE NAVY,)	
Defendants.)	

This matter is before the court on the *pro se* Plaintiff's motion captioned "Plaintiff makes a Motion that the Order of Dismissal by the U.S. Magistrate Judge or the Defense be Denied. Plaintiff is requesting that his Summary Judgment be Reinstated" [DE-25]. Also before the court is Defendants' Motion to Strike [DE-26].

I. PROCEDURAL HISTORY

On October 11, 2007, Plaintiff Doctor B. Jones ("Jones") filed a Complaint in this court, alleging he was discriminated against on the basis of his race and sex in violation of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. Sections 200e *et seq.* On October 24, 2007, Jones purported to amend the Complaint by filing additional documentation.

On December 7, 2007, Defendants filed the Motion to Dismiss or for Summary Judgment [DE-10]. On December 20, 2007, Jones filed a motion for an extension of time to respond, which was allowed by the Clerk of Court on December 27, 2007, allowing him until January 29, 2008 to file his response. *See* December 27, 2007 Order [DE-14]. On February 11, 2007, Jones filed three documents: (1) a motion seeking to have his response timely filed [DE-15]; (2) a document captioned "The Plaintiff Makes a Motion to Dismiss the Defendants[sic] Request for

Dismissal or Summary Judgment. The Plaintiff is Now Requesting Summary Judgment be Granted in his Favor Based on the Facts Provided in the Documentation on the Facts that are Irrefutable” [DE-16], and (3) a document [DE-17] identical to the document at [DE-16].

Defendants, on February 14, 2008, filed a response opposing Jones’s motion to have his response timely filed, to which Jones replied on February 20, 2008.

In an Order filed on February 22, 2008, United State Magistrate Judge William Webb denied Jones’s motion to have his response deemed timely filed. In so doing, Judge Webb deemed the document at [DE-17] to be a Motion for Summary Judgment, while the document at [DE-16] was characterized as an untimely filed Response. On March 11, 2008, Jones filed a motion captioned “The Plaintiff Makes a Motion that the Order of Dismissal by Defense be Denied” [DE-21] that sought, *inter alia*, to have his Motion for Summary Judgment “reinstated.”

In an Order filed on March 21, 2008, the court allowed Defendants’ Motion to Dismiss or for Summary Judgment [DE-10] and denied Jones’s Motion for Summary Judgment [DE-17]. The court also denied as moot Jones’s motion captioned “The Plaintiff Makes a Motion that the Order of Dismissal by Defense be Denied” [DE-21].

On March 24, 2008, Jones filed the motion captioned “Plaintiff makes a Motion that the Order of Dismissal by the U.S. Magistrate Judge or the Defense be Denied. Plaintiff is requesting that his Summary Judgment be Reinstated” [DE-25], which is almost identical to the motion [DE-21] denied as moot in the court’s March 21, 2008 Order.

Thereafter, on March 27, 2008, Defendants filed a Motion to Strike [DE-26] pursuant to Rule 12(f) of the Federal Rules of Civil Procedure. Therein, Defendants ask the court to strike the Motions at [DE-21] and [DE-25] from the record because, in the Defendants’ view, Jones has

used “increasingly inflammatory rhetoric” in the motions, and the allegations within the motions “are redundant, immaterial, and impertinent, and those pleadings are replete with scandalous language and charges.” Mem. in Support of Mot. to Strike [DE-27] at pp. 2-3. In the alternative, “Defendants request that this Court strike the most egregious statements within these two pleadings.” *Id.* at p. 5.

On April 14, 2008, Jones filed a Notice of Appeal [DE-28], stating that he was “appealing the denial of Summary Judgment due to the omission of all the facts in his case.”

II. ANALYSIS

Jones’s Motion [DE-25] is DENIED. It appears that he is seeking, again, the reconsideration of Judge Webb’s February 22, 2008, Order which denied his Motion [DE-10] to deem his Response [DE-16] to Defendants’ Motion for Summary Judgment as timely filed. The court concluded that his first motion to reconsider [DE-21] Judge Webb’s order was moot because Jones presented identical arguments in his timely Motion for Summary Judgment [DE-17] and the untimely Response [DE-16]. Jones has not presented any new compelling arguments, and this court is confident that Judge Webb’s February 22, 2008 Order, is correct and in accordance with the law.¹

The Government’s Motion to Strike [DE-26] also is DENIED. Rule 12(f) permits the court, either on its own or on motion of either party, to “strike from a *pleading* an insufficient defense or any redundant, immaterial, impertinent or scandalous matter.” FED. R. CIV. P. 12(f) (emphasis added). In this case, the Government has attempted to use Rule 12(f) to strike *motions*

¹ Although Jones filed a Notice of Appeal [DE-28] after filing the motion to reconsider, this court still retains jurisdiction to consider the motion. *See Fobian v. Storage Tech. Corp.*, 164 F.3d 887, 890-91 (4th Cir. 1999).

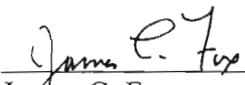
filed by Jones. Motions, however, are not included in the definition of “pleadings” under the Federal Rules of Civil Procedure. *See* FED. R. CIV. P. 7(a)(defining pleadings as complaints, answers, and court-ordered replies to answers). Consequently, the Government may not use Rule 12(f) to move to strike the motions filed by Jones. *See, e.g., Int’l Longshoremen’s Assn., Steamship Clerks Local 1624, AFL-CIO v. Virginia Int’l Terminals, Inc.*, 904 F. Supp. 500, 504 (E.D.Va. 1995)(concluding that summary judgment briefs and affidavits are not pleadings and therefore a Rule 12(f) motion could not be used to challenge such documents).

III. CONCLUSION

For the foregoing reasons, Jones’s motion captioned “Plaintiff makes a Motion that the Order of Dismissal by the U.S. Magistrate Judge or the Defense be Denied. Plaintiff is requesting that his Summary Judgment be Reinstated” [DE-25] is DENIED. The Government’s Motion to Strike [DE-26] also is DENIED.

SO ORDERED.

This the 5 day of ^{May}~~April~~, 2008.


James C. Fox
Senior United States District Judge